1997

State of Utah v. Jeffrey Affholter : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 971660-CA
v.	:	
JEFFREY AFFHOLTER,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A JUDGMENT AND SENTENCE ENTERED UPON GUILTY PLEAS TO CHARGES OF FAILURE TO STOP ON AN OFFICER'S SIGNAL, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-6-13.5 (1998); ATTEMPT TO ALTER OR REMOVE VIN, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 41-1A-1318 (1998); ATTEMPTED ESCAPE, A CLASS A MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 76-8-309 (1999); DRIVING UNDER THE INFLUENCE, A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-6-44 (SUPP. 1997); AND CRIMINAL MISCHIEF, A CLASS B MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 76-6-106(1)(C) (SUPP. 1997), IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR CACHE COUNTY, STATE OF UTAH, THE HONORABLE CLINT S. JUDKINS, PRESIDING

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NO ORAL ARGUMENT OR PUBLISHED OPINION REQUESTED

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Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a judgment and sentence entered on guilty pleas to the charges of failure to stop on an officer's signal, a third degree felony, in violation of Utah Code Ann. § 41-6-13.5 (1998); attempt to alter or remove vin, a third degree felony, in violation of Utah Code Ann. § 41-1a-1318 (1998); attempted escape, a class A misdemeanor, in violation of Utah Code Ann. § 76-8-309 (1999); driving under the influence, a class B misdemeanor, in violation of Utah Code Ann. § 41-6-44 (Supp. 1997); and criminal mischief, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-106(1)(c) (Supp. 1997) (in **Add. A**).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(e) (1996).

STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW

Absent any argument or authority from defendant, should this Court abandon established precedent and let defendant withdraw his valid, voluntarily-entered guilty pleas solely on the basis of post-sentencing "buyer's remorse?"

This issue presents a question of law which is reviewed for correctness. See State v. Pena, 869 P.2d 932, 936 (Utah 1994) (questions of law are reviewed for correctness).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Annotated, section 77-13-6 (1999), is the only statutory provision pertinent to the resolution of the issue presented on appeal and is contained in **Addendum B.**

STATEMENT OF THE CASE

Defendant Jeffrey Affholter was originally charged with eight offenses committed on June 18, 1997 (R. 2-5, 37-39). On June 27, 1997, he was charged with three additional offenses (R. 39). On August 6, 1997, defendant pleaded guilty to: failure to respond to an officer's signal to stop, a third degree felony; attempt to alter or remove a vin, a third degree felony; operating a vehicle while under the influence, a class B misdemeanor; attempted escape from official custody, a class A misdemeanor; and criminal mischief, a class B misdemeanor (R. 25-26, 39-40, 44-45). At that time, he was represented by David Perry (R. 25). The district court subsequently sentenced defendant to serve concurrent prison terms of zero-to-five years for each of the third degree felonies, one

year at the county jail for the class A misdemeanor, and six months at the county jail for each of the class B misdemeanors (R. 48-49, 106-08). The judgment, sentence and commitment was entered on October 2, 1997 (R. 48-49, 106-08).

Two weeks later, on October 16, 1997, the district court received a letter from defendant, who was acting *pro se* at that time (R. 50-51) (in **Add. C**). The district court treated the letter as a notice of appeal (R. 84). While on appeal, defendant was appointed his present counsel, who took the position that defendant's October 16 letter should be construed not only as his notice of appeal, but also as a motion to withdraw his guilty pleas (R. 66, 75-76). The Utah Court of Appeals remanded the matter to the district court for determination of the withdrawal issue (R. 86).

On July 27, 1998, the district court held a hearing on defendant's motion, at which the parties were given the opportunity to argue the timeliness and the merits of defendant's motion to withdraw his guilty pleas (R. 92-93). At that hearing, the district court denied defendant's motion, but did not enter a final signed, written order until July 21, 1999 (R. 93, 100-02).

STATEMENT OF FACTS

After a short pursuit by police on June 18, 1997, defendant was stopped driving a stolen car (R. 7). He failed field sobriety tests and did not possess a valid driver's license (id.). On July 29, 1997, defendant attempted to escape from the Cache County Jail (R. 29).

SUMMARY OF THE ARGUMENT

Defendant fails to provide argument or support for his assertion that this Court should ignore long-standing precedent and permit withdrawal of guilty pleas as a matter of course when a defendant suffers "general but unarticulated dissatisfaction with the sentence imposed by the trial court." Defendant does not claim ignorance of the trial court's authority to reject sentencing recommendations and concedes that there was no rule 11 violation in the taking of his guilty pleas. Accordingly, this Court should reject defendant's claim on appeal.

ARGUMENT

THIS COURT SHOULD NOT DEPART FROM ESTABLISHED LAW GOVERNING WITHDRAWAL OF GUILTY PLEAS WITHOUT ANY SUPPORTIVE REASONING OR MEANINGFUL ANALYSIS

Defendant seeks a ruling that he is entitled to withdraw his guilty pleas for the sole reason that he suffered "dissatisfaction" with the sentence ultimately imposed below. Br. of Aplt. at 18. He contends that this Court need only disavow its ruling in State v. Price, 837 P.2d 578 (Utah App. 1992), to enable him to withdraw his pleas in this case. Id. at 18.

In Price, this Court interpreted Utah Code Annotated, section 77-13-6 (1999), which sets a thirty-day deadline after entry of a plea for moving to withdraw guilty pleas, and Utah Rule of Criminal Procedure 11(e) and (f), which requires the trial court to inform defendant of the thirty-day time limit for withdrawing his pleas. This Court

determined that when a defendant is advised of the thirty-day time limit for filing a motion to withdraw a guilty plea, the time limit is jurisdictional, and a failure to file a motion to withdraw within that time limit deprives the trial court of jurisdiction to hear the motion. Id. at 583; Utah R. Crim. P. 11(7)(e) & (f).

Defendants asking this Court to overturn prior precedent "'have a substantial burden of persuasion . . . mandated by the doctrine of stare decisis.'" State v. DeCorso, 1999 UT 57, ¶ 83, 993 P.2d 837 (quoting State v. Menzies, 889 P.2d 393, 398 (Utah 1994), cert. denied, 513 U.S. 1115 (1995)), cert. denied, 120 S. Ct. 1181 (2000). A court "'may overrule its own . . . decision where the decision is clearly erroneous or conditions have changed so as to render the prior decision inapplicable.'" DeCorso, 1999 UT 57, ¶ 83, 993 P.2d 837 (quoting Menzies, 889 P.2d at 399 n.3) (additional quotation omitted).

Defendant makes no attempt to meet this burden, presenting his request in a single sentence in his conclusion. Br. of Aplt. at 18. Further, the decision in Price does not appear to be clearly erroneous on its face, and conditions have not so clearly changed since issuance of Price as to render the decision inapplicable in guilty plea cases. As defendant fails to justify his request that Price be overruled, this Court should refuse to make his arguments for him. See Carrier v. Pro-Tech Restoration, 944 P.2d 346, 354-55 (Utah 1997) (refusing to make a defendant's arguments to overturn prior case law where defendant did not himself make any argument). Moreover, this Court recently reaffirmed

Price in State v. Ostler, 2000 UT App 28, 388 Utah Adv. Rep. 43, and State v. Tarnawiecki, 2000 UT App 186.[1]

Even if this Court ignored the jurisdictional mandate of Price, defendant would still not be entitled to withdraw his pleas. Despite noting that the alleged withdrawal request was untimely, the trial court reached the merits, finding that defendant's pleas were entered knowingly and voluntarily and that defendant failed to establish any basis upon which the court could permit withdrawal of the pleas (R. 101-02). Defendant has not provided a transcript of the hearing for this Court's review, and he concedes on appeal that there was no rule 11 violation which would invalidate the pleas. Br. of Aplt. at 17, ¶65. He also makes no allegation on appeal of good cause which, if true, would entitle him to withdraw the pleas. Utah Code Ann. § 77-13-6. Neither the record nor defendant's argument shows that anything unusual or exceptional occurred sufficient to warrant withdrawal of the pleas.

What defendant really desires is a ruling by this Court that a defendant is entitled to withdraw his valid, voluntarily-entered guilty plea if, after sentencing, he suffers "buyer's remorse." To so rule would be to abandon the entire body of law in this area, and defendant offers no justification for doing so. Indeed, the law in this area has developed in an effort to deal with the myriad of claims of "buyer's remorse" advanced

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[1]The State has filed a petition for writ of certiorari in Ostler, and is reviewing the same option in Tarnaweicki.

by defendants over the years. See Summers v. Cook, 759 P.2d 341, 342 (Utah App. 1988). Absent some effort to justify such a drastic deviation from established law, this Court should decline defendant's invitation.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the trial court's denial of defendant's motion to withdraw his guilty pleas.

ORAL ARGUMENT AND PUBLISHED OPINION

Because this case presents no complex or novel questions, the State does not request that it be set for oral argument or that a published opinion issue.

RESPECTFULLY SUBMITTED this 27th day of July, 2000.

JAN GRAHAM
Attorney General

KRIS C. LEONARD
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed by first class mail, postage prepaid, to A.W. Lauritzen, attorney for appellant, P. O. Box 1171, Logan, UT 84321, this 29th day of June, 2000.

Addendum A

UTAH CODE ANNOTATED

1953

VOLUME 5A

1998 REPLACEMENT

Titles 39 to 46

41-1a-1318. Second degree felony — Fraudulent alteration of identification number.

(1) It is a second degree felony for a person with fraudulent intent to:

(a) deface, destroy, or alter the identification number or state assigned identification number of a motor vehicle, trailer, or semitrailer;

(b) place or stamp, without authority by the division, something other than the original identification or state assigned identification number upon a motor vehicle, trailer, or semitrailer; or

(c) sell or offer for sale a motor vehicle, trailer, or semitrailer bearing an altered or defaced identification or state assigned identification number other than the original or the state assigned identification number.

(2) This section does not prevent any manufacturer, importer, or any agent, other than a dealer, from placing or stamping in the ordinary course of business numbers on motor vehicles, trailers, or semitrailers registered under this chapter.

(3) This section does not prohibit the restoration by an owner of an original identification number when the restoration is made under permit issued by the division.

History: L. 1935, ch. 46, § 57; 1937, ch. 65, § 1; C. 1943, 57-3a-58; L. 1955, ch. 66, § 1; 1989, ch. 274, § 13; C. 1953, 41-1-58; renumbered by L. 1992, ch. 1, § 175.

UTAH CODE ANNOTATED

1953

VOLUME 5A

1998 REPLACEMENT

Titles 39 to 46

41-6-13.5. Failure to respond to officer's signal to stop — Fleeing — Causing property damage or bodily injury — Suspension of driver's license — Forfeiture of vehicle — Penalties.

(1) An operator who, having received a visual or audible signal from a peace officer to bring his vehicle to a stop, operates his vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person, or who attempts to flee or elude a peace officer by vehicle or other means is guilty of a felony of the third degree. The court shall, as part of any sentence under this subsection, impose a fine of not less than $1,000.

(2) An operator who violates Subsection (1) and while so doing causes death or serious bodily injury to another person, under circumstances not amounting to murder or aggravated murder, is guilty of a felony of the second degree. The court shall, as part of any sentence under this subsection, impose a fine of not less than $5,000.

(3) (a) In addition to the penalty provided under this section or any other section, an operator who, having received a visual or audible signal from a peace officer to bring his vehicle to a stop, operates his vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person, or who attempts to flee or elude a peace officer by vehicle or other means, shall have his driver's license revoked pursuant to Subsection 53-3-220(1)(a)(ix) for a period of one year.

(b) The court shall collect the driver's license to be revoked and forward it to the Division of Drivers' License Services, along with a report of the conviction. If the court is unable to collect the driver's license, the court shall nevertheless forward the report to the division. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the driver's license but shall notify the division and the division shall notify the appropriate officials in the licensing state.

History: C. 1953, 41-6-13.5, enacted by L. 1978, ch. 33, § 38; L. 1981, ch. 269, § 1; 1987, ch. 138, § 6; 1993, ch. 71, § 1; 1995, ch. 20, § 89.

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license.

(1) As used in this section:

(a) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. 815;

(b) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(c) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(a) class B misdemeanor; or

(b) class A misdemeanor if the person:

(i) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(ii) had a passenger under 16 years of age in the vehicle at the time of the offense.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 24 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than $700.

(d) For a violation committed after July 1, 1993, the court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug dependency rehabilitation facility determines that the person has a problem condition involving alcohol or drugs.

(5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 80 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than $800.

(d) The court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6) (a) A third or subsequent conviction for a violation committed within six years of two or more prior convictions under this section is a:

(i) class A misdemeanor except as provided in Subsection (ii); and

(ii) third degree felony if at least:

(A) three prior convictions are for violations committed after April 23, 1990; or

(B) two prior convictions are for violations committed after July 1, 1996.

(b) (i) Under Subsection (a)(i) the court shall as part of any sentence impose a fine of not less than $2,000 and impose a mandatory jail sentence of not less than 720 hours.

(ii) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 240 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow-through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(c) Under Subsection (a)(ii) if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500;

(ii) a mandatory jail sentence of not less than 1,000 hours; and

(iii) an order requiring the person to obtain treatment at an alcohol or drug dependency rehabilitation program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment.

(7) (a) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, until the convicted person has furnished evidence satisfactory to the department that:

(i) all required alcohol or drug dependency assessment, education, treatment, and rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

(ii) all fines and fees including fees for restitution and rehabilitation costs assessed against the person have been paid, if the conviction is a second or subsequent conviction for a violation committed within six years of a prior violation; and

(iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this subsection of the consequences of a violation of Section 41-6-44.6 or of 41-6-45.

(c) The court shall notify the department of each conviction of Section 41-6-44.6 or 41-6-45 entered under this subsection.

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Department of Public Safety shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this subsection, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend or revoke that person's driving privileges for a specified period of time.

History: L. 1941, ch. 52, § 34; C. 1943, 57-7-111; L. 1949, ch. 65, § 1; 1957, ch. 75, § 1; 1967, ch. 88, § 2; 1969, ch. 107, § 2; 1977, ch. 268, § 3; 1979, ch. 243, § 1; 1981, ch. 63, § 2; 1982, ch. 46, § 1; 1983, ch. 99, § 13; 1983, ch. 103, § 1; 1983, ch. 183, § 33; 1985, ch. 46, § 1; 1986, ch. 122, § 1; 1986, ch. 178, § 29; 1987, ch. 138, § 37; 1987 (1st S.S.), ch. 8, § 2; 1988, ch. 17, § 1; 1990, ch. 183, § 16; 1990, ch. 299, § 1; 1991, ch. 147, § 1; 1993, ch. 168, § 1; 1993, ch. 193, § 1; 1993, ch. 234, § 32; 1994, ch. 159, § 1; 1994, ch. 263, § 1; 1996, ch. 71, § 1; 1996, ch. 220, § 1; 1996, ch. 223,

UTAH CODE ANNOTATED

1997 Supplement

REPLACEMENT VOLUME 8B

1995 EDITION

76-6-106. Criminal mischief.

(1) A person commits criminal mischief if the person:

(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;

(b) intentionally and unlawfully tampers with the property of another and thereby:

(i) recklessly endangers human life; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any public utility service;

(c) intentionally damages, defaces, or destroys the property of another; or

(d) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.

(2) (a) A violation of Subsection (1)(a) is a felony of the third degree.

(b) A violation of Subsection (1)(b) is a class A misdemeanor.

(c) Any other violation of this section is a:

(i) felony of the second degree if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $5,000 in value;

(ii) felony of the third degree if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $1,000 but is less than $5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $300 but is less than $1,000 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than $300 in value.

(3) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any computer, computer network, computer property, computer services, software, or data shall include the measurable value of the loss of use of such items and the measurable cost to replace or restore such items.

History: C. 1953, 76-6-106, enacted by L. 1973, ch. 196, § 76-6-106; 1992, ch. 14, § 1; 1995, ch. 291, § 11; 1996, ch. 142, § 1; 1997, ch. 300, § 1.

UTAH CODE ANNOTATED

1953

VOLUME 8B

1999 REPLACEMENT

Titles 76 and 77

76-8-309. Escape and aggravated escape — Consecutive sentences — Definitions.

(1) A prisoner is guilty of escape if he leaves official custody without authorization.

(2) A prisoner is guilty of aggravated escape if in the commission of an escape he uses a dangerous weapon, as defined in Section 76-1-601, or causes serious bodily injury to another.

(3) Aggravated escape is a first degree felony.

(4) Escape from a state prison is a second degree felony.

(5) Any other escape is a third degree felony.

(6) Any prison term imposed upon a prisoner for escape under this section shall run consecutively with any other sentence.

(7) For the purposes of this part:

(a) "Confinement" means:

(i) housed in a state prison or any other facility pursuant to a contract with the Utah Department of Corrections after being sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole;

(ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county jail after sentencing and commitment and the sentence has not been terminated or voided or the prisoner is not on parole; or

(iii) lawfully detained following arrest.

(b) "Official custody" means arrest, whether with or without warrant, or confinement in a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement pursuant to an order of the court or sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole. A person is considered confined in the state prison if he:

(i) without authority fails to return to his place of confinement from work release or home visit by the time designated for return;

(ii) is in prehearing custody after arrest for parole violation;

(iii) is being housed in a county jail, after felony commitment, pursuant to a contract with the Department of Corrections; or

(iv) is being transported as a prisoner in the state prison by correctional officers.

(c) "Prisoner" means any person who is in official custody and includes persons under trustee status.

History: C. 1953, 76-8-309, enacted by L. 1996, ch. 104, § 1; 1997, ch. 289, § 9; 1997, ch. 311, § 1.

Addendum B

UTAH CODE ANNOTATED

1953

VOLUME 8B

1999 REPLACEMENT

Titles 76 and 77

77-13-6. Withdrawal of plea.

(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2) (a) A plea of guilty or no contest may be withdrawn only upon good cause shown and with leave of the court.

(b) A request to withdraw a plea of guilty or no contest is made by motion and shall be made within 30 days after the entry of the plea.

(3) This section does not restrict the rights of an imprisoned person under Rule 65B, Utah Rules of Civil Procedure.

History: C. 1953, 77-13-6, enacted by L. 1980, ch. 15, § 2; 1989, ch. 65, § 1; 1994, ch. 16, § 1.

Addendum C

CASE 971-381

9-30-97

to whom It may concern:

I am writing to ask for a Appeal of my sentence. For I was not given the facts from my attorney about my case. Also I was not given a chance to say something on my own behalf. I would like have a chance to prove my case in a different court of law. I will be writing the Supreme Court also. As I was not given the chance even to have the probation redone and I know that the court would not let me present evidence for my case. I just want to have my case seen again. I received from California a list of all my prior convictions which would have made a difference in the Probation Report. I want another Hearing on this matter I am requesting a Appeal from this court. on the Gounds of Utah Rules of Criminal Procedure. Rule #32(A) Rule 26 Appeals 2(A)

971-381
10-14-97

I would also like a Copy of my File on Record. Also the paper work shows that the probation Report is wrong. And for this I would like a New trial Date Set.

Thank you

Jeff Affholter

Jeff Affholter